

## MAKING THE CASE

# Integrated Solutions for Intellectual Property

## A Shrewd Investment for Uncertain Times

During periods of economic instability, Intellectual Property (IP) can be a surprisingly attractive investment vehicle. Product innovation through patent investment can facilitate additional revenue generation through immediate lower-yield returns, as well as from longer-term, higher-yield returns. When viewing IP as a true asset, the question for businesses is how to assess and maximize these advantages, particularly in challenging economic times.

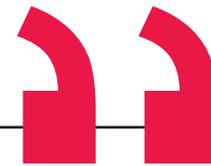


During times of economic instability, Intellectual Property (IP) can be an attractive investment vehicle. Specifically, IP must rightly be considered a real asset, with many advantages over traditional assets<sup>1</sup> :

- IP assets are likely to preserve value during periods of economic downturn and instability, often demonstrating a beta much lower than that of the overall market.
- IP assets are unaffected by the scarcity of input resources resulting from an economic downturn, such as supply chain shortages or unavailability in various sectors such as energy, manufacturing, and agriculture.
- IP is essential to GDP, and will continue to be so, as evidenced by the US Department of Commerce's Bureau of Economic Analysis, which has identified "Intellectual Property Products" as a significant and growing contributor to the economy.
- Intellectual property products often offer low operating risk, ready transferability of rights and/or license, and long economic life (typically at least 20 years), as well as steady cash flows that may be utilized for funding long-term liabilities.
- Unlike traditional real assets that are correlated with economic inflation, IP assets tend to have low correlation with inflation, meaning that investment and development of the IP portfolio may serve as a hedge to inflation.

Product innovation through development and investment in IP can facilitate revenue generation in two streams: immediate lower-yield returns, as well as the possibility of longer-term higher-yield returns. On a fundamental level, the development of IP adds value to a business. It is an asset that can be valued by a professional (e.g., an economist or accountant), and this value can be used to secure a loan or other financing. The baseline value associated with the development of IP originates not only from the assigned value of the asset, but also from its ability to help a company develop additional control over markets. Controlling or gaining influence in a market can lead to increased market share, or the opportunity to license the IP both domestically and in foreign markets.

Consequently, the immediate value proposition associated with IP development is multi-fold, including not only the assessed value of the asset, but the additional opportunities to generate passive income via licensing and related agreements. Enforcement via litigation and/or the sale of a substantial asset or company may also contribute significant value to a business.



***History has shown . . . companies and countries which continue to invest in new products and innovation during times of economic recession will be those that will be best positioned to take advantage of the recovery, when it arrives.***

***- Dr. Francis Gurry, World Intellectual Property Organization<sup>2</sup>***

## The Challenge

When viewing IP as a real asset with a significant upside, the question for business is how to assess and maximize these advantages. When resources are scarce, companies often look for alternatives to increase cash flow via two routes: (1) product innovation (e.g., IP development), and (2) litigation (the enforcement of IP rights).

Historical data and trends indicate that recessionary periods are good opportunities for businesses to be innovative and to invest internally. Given the events in the first half of 2020, there are heightened challenges and considerations, particularly, how do businesses faced with the reality of decreased revenues and resources optimize their ability to be creative and invest in their patent portfolios?

One of the major obstacles for companies in maximizing IP opportunities is that the responsibility for maximizing IP is typically not centralized in any one area of the enterprise, but dispersed across numerous departments and functions. Responsibilities can be shared among operating units, the R&D department, the C-suite, and the legal department, all of which have different and important duties.

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## The Solution

Companies that recognize the potential of IP, are discovering the value of working with partners that can help them overcome internal barriers. A case in point: Polsinelli, an AmLaw 100 firm, and UnitedLex, a technology and legal services provider, partnered to provide an integrated solution to enable businesses to maximize efficiency and revenue in IP during the economic downturn.

The Polsinelli-UnitedLex services include the development of new IP; the internal assessment and audit of existing IP portfolios; the monetization of existing IP to develop revenue via licensing and other agreements; the assertion and enforcement of IP rights through litigation and alternative dispute proceedings; and tailored solutions based on combinations of these strategies.

In addition, the Polsinelli-UnitedLex team gives businesses the opportunity to engage on a modular or an enterprise-wide basis, controlling and predicting IP legal spend in the process. Clients benefit from skilled and experienced lawyers, while using a legal services provider with deep proficiency in IP to handle routine and repeatable tasks.

## Patent Prosecution and Strategy

Companies can leverage the Polsinelli-UnitedLex partnership to capitalize on the development and maintenance of patent filings and increase cost effectiveness through:

- Comprehensive management of large patent prosecution projects
- Efficiency and quality assurance through all project phases
- Strategic guidance regarding filing strategies, including which countries and jurisdictions to pursue

In a carefully coordinated end-to-end process, UnitedLex drafts the specification, drawings, and figures. Polsinelli handles the high-level attorney input, including drafting claims and the development of upfront patent drafting and prosecution strategy to ensure issuance and the strongest possible patent coverage. The partnership provides an objective assessment of individual business needs and goals, the development of strategies identifying the most impactful markets, and the streamlining of worldwide filings to save on costs. For example, a company may partner with organizations in a particular jurisdiction to diffuse costs and provide savings to individual businesses. This type of agreement often requires the investing company to pay for the management of the IP estate in those jurisdictions and also to cover foreign jurisdiction translation fees. Polsinelli-UnitedLex offers timely and expedited management of such requirements, ultimately saving costs.

In addition to providing a synergistic approach to patent drafting and prosecution, clients can benefit from business-level advantages suited to today's economic climate including:

- Substantial work undertaken for a controlled price
- Continued development of a large patent portfolio without the need for extensive in-house resources
- Comprehensive management of the routine workload typically performed by in-house attorneys
- Deep understanding of the work and culture of many types of businesses
- Global dynamic resourcing for prior art and freedom-to-operate search and review for cost efficiencies

With a commitment to quality and efficiency, Polsinelli and UnitedLex allow businesses to produce high-quality applications at scale while controlling in-house lawyer count and cost.

## IP Portfolio Review and Audits

Owners of IP must look at current portfolios of patents and trademarks to assess potential strengths and weaknesses. For example, the ongoing maintenance of domestic and foreign IP assets can prove costly. UnitedLex has proven processes to determine which patents and trademarks should be maintained and which should be jettisoned. This process of internal valuation and assessment may create additional economic opportunities.

Unused assets can be:

- Bundled and licensed to third parties for a fee
- Subject to an enforcement campaign utilizing third-party resources such as litigation funding
- Used as collateral for a loan in some cases
- Sold to investors with a license-back negotiation to continue utilizing the technology

Assets that are determined to not have sufficient value can be abandoned, saving the business unnecessary and ineffective costs.

Companies can reinvest funds gained from the divestiture of unused or undervalued assets in enforcement campaigns or new technology.

## IP Litigation and Related Proceedings

Similar to the strategies utilized for patent prosecution and maintenance, the Polsinelli-UnitedLex partnership provides many advantages with regard to IP litigation. UnitedLex can deploy an IP Services team for a company's IP Litigation group that allows for controlled fees in litigation, and additionally allows for usage of existing patent portfolios to monetize the assets for the benefit of the company. During times of financial volatility, it can be hard to grow or even maintain headcount.

Economic downturns tend to spur more aggressive assertion of IP rights, making this moment one of the most important times to protect innovation. Companies that take advantage of the opportunity to invest now will emerge with a stronger IP position and portfolio and will likely capture larger market share in the quarters to come. With the availability of litigation financing, now may be the ideal time to initiate an enforcement action. If defendants are not optimistic about their defenses, they are likely to settle rather than fight the litigation—and potentially on more favorable terms. Enforcement could additionally be used to drive licensing revenue.

In addition to the classic forums for IP litigation, the Polsinelli-UnitedLex partnership provides an innovative approach to alternative forums for IP disputes, including International Trade Commission (ITC) proceedings and Inter Parties Review (IPR) proceedings with the Patent Trial and Appeal Board (PTAB). ITC proceedings are typically performed on a faster schedule than litigation, and can be an effective strategy for addressing foreign competition. Similarly, IPR proceedings also offer a more expedient and cost-effective strategy for addressing patent disputes in the US. The Polsinelli-UnitedLex partnership can offer many of the same synergies and efficiencies provided with IP litigation in these alternative forums, leading to a more cost-effective way to assert or defend IP rights.

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## Conclusion

When business pressures mount, conventional thinking is usually that now is not the time for far-sighted investment. The potential returns from effective management of IP—assets that companies already own—offer an attractive alternative for shrewd business leaders. Through their partnership, Polsinelli-UnitedLex allows companies to efficiently leverage these assets to generate new revenue streams.



UnitedLex is a technology and legal services company committed to delivering full-scale Digital Legal Transformation. With more than 3,000 legal, engineering, and technology professionals globally, we enable legal organizations to thrive in the Digital Age.

Polsinelli is a national law firm that was recently honored as a Top 10 Best Performing Law Firm Overall and is the No. 6 Best Performing Law Firm in High-Tech, according to Patexia's Patent Prosecution Intelligence Report 2020 edition. The firm was named in six rankings lists in Patexia's annual report, based on its efficiency, success and activity, as well as for its number of cases.

Contact [info@unitedlex.com](mailto:info@unitedlex.com) or [marketing@polsinelli.com](mailto:marketing@polsinelli.com) to learn more about transforming your IP into real assets, and about our broader programs for Digital Legal Transformation.

## References

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